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AN URGENT NEED FOR NEW LAWS

Members of Local Bar Discuss Changes.

(From Saturday's Daily.)

The members of the Hawaiian Bar Association were enlightened by Chief Justice Frear yesterday afternoon as to the work that jurist had been engaged upon in his effort to straighten out the tangle of the Territorial law, in so far as one man might, prior to the meeting and for the benefit of the approaching legislature. It was an adjourned meeting, held at Castle & Cooke Hall, and at first did not give promise of large attendance, as neither the President nor the Secretary was on hand. Mr. W. R. Castle was called to the chair, and by the time the meeting had been called to order Secretary Case came in and the business moved along very smoothly. The Secretary, as a preliminary, read the minutes of the previous meeting, and they were approved.

"We have met here," said Mr. Castle then, "to talk over a series of amendments to the Territorial law, which I understand Judge Frear has been engaged in preparing, in response to an invitation sent to this Association by the Republican Territorial Central Committee. Before we proceed to this discussion, perhaps the secretary would better read some letters which he has in hand."

The secretary then read the invitation extended to the Bar Association by the Republican Territorial Committee, with its accompanying correspondence, and a letter from John D. Willard, of Kauai, regretting his inability to be present at the meeting, and suggesting that changes be made in the laws, as follows:

"That the organization, powers, and duties of the grand jury be definitely settled by statute; that the fees of grand jurors should be increased; that costs, and especially witness fees, in equity cases should be placed on a level with those of the circuit court; that the witness fees in district courts be increased; that the standard of qualifications for license to practice in the district courts be raised; that only attorneys at law be allowed to prosecute criminal cases in all courts; that the court assign attorneys to defend pauper criminals; that the circuit judge in chambers be given original jurisdiction to try without a jury all cases involving not less than \$100 and not more than \$1,000; that all existing laws be codified; that the Fifth circuit court be given four terms a year, one every three months; that this court be given a resident salaried stenographer."

The letter of Mr. Willard, with other letters read by the secretary, was ordered received and placed on file.

Next, the names of Will L. Whitney and S. Hackett Derby were proposed for membership, having been posted for the usual time, and they were elected by acclamation.

From the committee appointed to draft legislation relative to the admission of attorneys to practice at the bar, Mr. Judd reported that the chairman was absent, but that the committee would have certain recommendations to make in the near future.

The chairman suggested that something be done before the next meeting, as the time for the assembling of the legislature was drawing on fast.

Mr. Judd said that he understood that Chief Justice Frear had drawn a bill covering the matter, but that no copy of the bill was at hand, and then the committee was continued in the consideration of the subject on the understanding that it would have the proposed new law ready for legislative action.

Mr. Weaver, from the committee on the practice act, made a report of progress, which was accepted, as follows:

"This committee recommends that the Bar Association take steps:

"First—To have enacted in this Territory a practice act.

"Second—That in such act, the distinction between actions at law and suits in equity and the forms thereof be abolished, and one form of action and one mode of pleading be provided for all suits.

"That whenever there is a conflict between the principles of law and equity, that the principle of equity shall govern."

"Third—We recommend as a basis of consideration by this association, the House Bill No. 78, as introduced in the legislature of 1898, the same being compiled from the Field Code of New York."

PHILIP L. WEAVER,
Chairman.

Honolulu, January 23, 1903.

Then Lorin Andrews asked Chief Justice Frear to give his views of the changes he had found it expedient to recommend to the legislature in the course of the arduous task he had undertaken in going over all the laws of the Territory, with a view to the simplification of the present complicated system.

The Chief Justice said he was doubtful of the expediency of taking up the time of the Association by making such an exposition at this time. It would perhaps be better for the Association to appoint committees on the several classes of subjects to be considered with reference to bringing order out of the chaos of Hawaiian laws, such com-

mittees to have power to draft bills.

Lorin A. Thurston said that Chief Justice Frear had given him a brief summary of some of the difficulties he had met with in his work some days since, and of some of the recommendations he would propose in the line of improvement, and he thought that it would be of great value if Mr. Frear would consent to make the whole association the same exposition he had made in his talk with him.

Mr. Hartwell also thought that it would be an excellent idea to hear from the Chief Justice, and Mr. Frear came forward and told the association what he had been doing, briefly, and what, in his own opinion, it was necessary yet to do.

"There seems to be an idea in some quarters," said Chief Justice Frear, "that I am drafting a brand new code for the islands. That is not the case, at all. I have not even been making a compilation of existing laws. It would be a task too arduous, and there would be no assurance that it would be adopted as a whole at the brief session of the legislature, if such compilation were made. I have thought it best to make a kind of patchwork of the laws, harmonizing conflicts and doing away with dead statutes so that any one could codify them after the legislature had passed the acts necessary to make such changes operative."

"In fact, I have been working with three ideas in view. The first idea has been to make this patchwork from the old laws upon which to base a harmonious system. The second idea has been to have these laws codified after they were harmonized. My third idea has been to recommend some changes in the powers and duties of the judiciary."

"Under the first heading, let me state that there has been no compilation of the laws of the Territory since 1857. The laws, as they stand, are full of imperfections. In some cases the same ground is covered by three sections. In other cases sections overlap each other, and there are sections still on the statute books that depend for their action upon some officer whose office has been abolished. The whole body of the laws of the Territory, in fact, is full of inconsistencies and invalidities. The Organic Act of the Territory alone wiped out 1,000 sections in round numbers. Now, it is my first idea that an attempt should be made to so patch up our laws that we could bring order out of the chaos, cutting off the dead matter, while losing nothing that is good."

"Under the second heading, I would have the patch work made under the first intelligently put together. The Organic Act made sweeping changes in our laws and in their system of operation. The proposed new county government bill will make more sweeping changes. It is almost an impossibility, as the laws now stand, for the lawyer to find any rule of law covering any subject. It is maddening. And yet there is no valid reason why the laws of the Territory should not be contained in one volume, not large, with an index that would make it easy in practice to turn to any section. Further than that, the old edition of the civil law of the islands is exhausted. It is almost impossible to get, and it is costly when obtained. There is no reason why the whole code should not be put in one volume, at a cost of say \$10, which would pay for itself."

"Thirdly, in the matter of laws relating to the judiciary, we need a new jury law. It is even a question whether, under the law as it is confused, any of our old jury law remains. Judges call juries under different acts, with a result that grave doubts arise as to their validity in most serious cases. This should be regulated, and the expense of calling juries should be reduced."

"There should be a regulation of the terms of the circuit court so that the court should hold its sessions only at Hilo, on the island of Hawaii and not at Honolulu, and at Waikuku only on Maui. Hilo and Waikuku are to be the capitals of the counties, respectively on Hawaii and Maui the court houses are to be there, the clerks there and the libraries. It is bad for litigants and lawyers and court officers to be dragged needlessly to places where there is little business, and most expensive for the Territory. Then, the sessions of the circuit court should be, in effect, continuous, in the first and fourth circuits, to meet the great and growing business in those circuits."

"In criminal practice, we should adopt the system of finding indictments by grand juries. Also, some supplemental legislation is needed in defining the jurisdiction of district magistrates. We should make the distinction that district magistrates should commit for minor offenses only, and the superior court for infamous crimes, as is done in the States. There are a number of offenses for which the penalty should be reduced to one year, to relieve the pressure on the grand juries, among these being larceny in the second degree, which should be made to consist of stealing sums of less than \$50. For the crimes of embezzlement by a public officer, and burglary in the first degree, the life sentence as imposed by our statutes is too severe. The statute relative to desertion in the marital relation should be repealed. Lastly, the matter of the jurisdiction of district magistrates should be defined in one statute, covering that subject. Eighty-five sections of law as they stand could be condensed into one."

"It is doubtful whether constructive contents are punishable under our law, but where they are punishable would it not be well to give the right of appeal? Would it not be well to require the judge to set out all the facts in his findings, so that on habeas corpus proceedings the appeal judge would have all the facts before him upon which to base his action?"

"In our code of civil procedure, it is doubtful whether provision is made for the appointment of guardians for heirs in foreign countries. The matter of the probate of wills should go to the equity courts, so that they would come up in the supreme court on direct appeal rather than on exceptions. In the matter of appeal bonds, there should be more strictness while at the same time no hardship should be worked to the litigant. Just how far we should go in this direction is a question, but there is a great need of some reform to prevent a serious litigation."

"Rescind all those, a great many other

sections need amendment and pruning, such as the habeas corpus statute and many others. Then, passing to other matters, we should have a new judiciary building, with five great vaults to hold our records. The library should be so changed and improved that we would have double the room we have now, for books and tables to be used in consultations."

Judge Frear sat down, amid a round of applause, and Judge Hartwell asked him if he had already done the work necessary to bring about the changes he had suggested.

"There are 500 sections to be changed," said Judge Frear. "I have drafted many bills, and Judge De Bolt has drafted some others."

Judge Stillman said that he had understood that an elaborate compilation had been made by Judge Frear for the guidance of the last session of the Legislature.

Judge Frear replied that he did not know how elaborate it was, but it had been made. He did not think, however, that it was practicable to adopt a compilation at this session, and thought it was better to go to work piecemeal. A compilation would take too much time and no one person should do it.

Mr. Thurston thought that a number of the things outlined by Judge Frear were of such nature that the whole force of the Bar Association should be brought to bear to secure their adoption. But the work must be done intelligently, so as not to swamp the Legislature with work. "And we should not throw the onus of this thing on Judge Frear alone," Mr. Thurston said. If the President of the Association would meet the Chief Justice, or appoint committees to meet with him in this work, committees strong enough to carry it through, we could then get the necessary bills drawn up to throw the whole report recommending their passage before the Legislature on the first day of the session, giving ample time for the action it was desired to take. The changes proposed by Judge Frear were not new laws. It was merely a kind of compilation to put an end to a condition that lawyers and laymen both found to be intolerable. To the end that action might be taken Mr. Thurston proposed the following motion:

"I move that the Chief Justice be requested to lay what bills he may desire to present to the Association before the chairman, and that thereafter the chairman be given authority to appoint such committees as he may think necessary to consider these bills, and report them at a later meeting for recommendation or otherwise."

Mr. Rawlins seconded the motion, and Mr. Achi moved as an amendment that the chairman appoint two committees of three each, one for civil and one for criminal laws. This was seconded also, but was lost and the original motion prevailed after Mr. Thurston had explained that he would have accepted the Achi amendment had not the bills it was proposed to consider been so numerous that two committees could hardly handle them in the time remaining.

Mr. Weaver then submitted the following resolution with reference to the Terrans land law:

"Resolved that whereas a system of registering titles to land has been in force in Australia, in its various colonies for a quarter of a century, known as the Torrens system, and whereas the Canadian provinces of Manitoba, and Ontario have enacted since 1885, similar statutes and whereas of late years the system has been adapted to the needs of the states of Maine, Massachusetts, Illinois, Minnesota, Washington and California, and whereas by various judicial decisions of the highest courts of various states such a system has been upheld as constitutional, and whereas the Massachusetts statute of that State and of the United States and upheld. Now therefore,

"Resolved, that a committee of three be appointed by the chair within one day from date, to investigate the subject of the adopting the system of land registering in this Territory and to recommend as far as possible the details to be contained in the bill. That the committee be required to report to a subsequent meeting hereof with a draft of the bill."

The resolution was seconded by Mr. Dickey, and was adopted, the committee appointed consisting of Messrs. Weaver, Dickey and Hartwell.

Mr. Gill moved the appointment of a committee to draft a bill to provide for a Code Commission. Judge Stillman seconded the motion, giving as his reason an apprehension that Congress would appoint such a Commission if the Territory did not and after some discussion, Mr. Hartwell saying he had no fear of action by Congress and was opposed to the code system. Anyway, the committee was appointed consisting of Messrs. Gill, Stillman and Derby.

The Association then adjourned for one week. Those present at the meeting were A. S. Hartwell, W. N. Armstrong, A. G. M. Robertson, J. M. Davidson, Lorin Andrews, P. W. Milverton, A. G. Correa, W. T. Rawlins, C. H. Dickey, Frank Andrade, A. F. Judd, Charles Dole, W. L. Whitney, R. D. Stillman, L. Dickey, Phil. Weaver, W. C. Parke, Charles Achi, E. S. Gill, C. C. Bittling, L. J. Warren, C. F. Peterson, L. A. Thurston, C. Long, E. B. McClanahan, Enoch Johnson, H. L. Marx, G. H. Derby, C. R. Hemenway, Wm. T. Rawlins, and Chief Justice Frear.

TWO WINGS FOR CAPITOL BUILDING

(Continued from Page 1.)

G. A. Howard. It shows the proposed extension on the line of the main building, and with nearly the same arrangement as to the interior. The present style of architecture is maintained, though it will be seen by the illustration to be of a rather elongated character.

If the idea of Superintendent Cooper is carried out by an appropriation from the legislature, it will permit of the Judiciary building being used as a City Hall, or perhaps as a Federal building until the United States erects a building for that purpose.

John Daniel Martin, a Hilo pioneer, died Wednesday, aged 74 years.

IS NOT A BANKRUPT

Federal Jury Finds for Niccolls at Hilo.

Something novel in Hawaiian Federal court procedure was the verdict of a jury in Hilo last Friday finding that Walter E. Niccolls of that place was not a bankrupt as alleged by his Honolulu creditors. The petition in involuntary bankruptcy was filed against Niccolls last November. H. Hackfeld & Co. claimed that Niccolls owed them \$13,158, Grinbaum & Co. claimed \$696 and S. Ozaki \$241. The act of bankruptcy alleged to have been committed by him was that he had "conveyed, concealed and transferred certain lots at Olua, intending thereby to defraud his creditors."

The case was tried before Judge Estee and a jury in Hilo on Friday last, Niccolls denying the act of bankruptcy or that he was insolvent. The jury was out but ten minutes returning a verdict in favor of the defendant.

HILO NEWS NOTES.

A new fishing company, headed by white men, is trying to compete with Japanese fishermen in Hilo. They own a staunch boat and fish in deep water.

An unusually long list of delinquent taxpayers appears in this issue. The list is augmented by the names of a number of persons who are awaiting the result of the test to be given the validity of the income tax law.

A fishing sloop, the property of some white fishermen here, broke from her moorings during the blow Tuesday night and was smashed on the rocks near the Kinau wharf. She had but recently been put in service.

John Daniel Martin died at his home in Hilo Wednesday night of this week after an illness of ten days. Mr. Martin was one of the well known characters of Hilo and was highly esteemed in all circles for his many sterling qualities.

Manuel Machado, residing at Kaunama, was awakened Saturday night by some one moving about his room. When Machado called the intruder jumped out of a window and escaped. It was discovered later that the thief had taken \$50 of Machado's money.

Rev. Sidney H. Morgan, late of the Diocese of Spokane, will arrive in Hilo some time in February to take charge of the local work for the Episcopal church. In a letter to Thomas Cooke, Bishop Restarick gives the above information together with the fact that he himself will shortly visit this island.

Judge Morris M. Estee, of the United States District Court; R. Breckons, U. S. District Attorney; F. C. Handy, Deputy U. S. Marshal, and other officers of the court, arrived by the Kinau late Wednesday night. In compliance with the requirements of the law Judge Estee convened court that night, adjourning immediately.

N. C. Williford returned Wednesday from a trip through the outer districts in connection with the duties of his office. Mr. Williford says the people in Kona and Kohala are taking a great interest in the proposed county bill. Public meetings are being held at which the chief point discussed is that of boundaries. There is an influential element at the north end of the island desirous that Waimea be made a county seat. There are supporters of this view both in the Kohalas and in Hamakua.

John Borge, brake tender on a lumber wagon of the Onomea Sugar Company, lost his life in Hilo last Friday morning. The wagon was at Hackfeld's lumber yard waiting for a load when the horses started to run away. Borge jumped for the bridle on one of the leaders and tried to hold them but they ran too fast for him and he had to let go. He fell under the horses and two of the wheels passed over his back. He was picked up by Mr. Hopkins, an employee of Hackfeld & Co., and put in a hack. Before reaching the hospital the man died. Borge was a young and hardworking Portuguese.

HAWAII HAS A SECOND TRACY

Francisco Lopez, four times an escaped convict, is at large and evidently has decided to follow the example of Tracy. Since his escape ten days ago, Lopez is reported by Porto Ricans to have said that he will not be taken alive again. He has a revolver and declares he will use it.

The latest trace of Lopez is found from the story of Juan Hernandez, who came into the police station yesterday with two frightful slashes on the side of his face, the work of the escaped convict. Hernandez, who is a Porto Rican laborer from Maui, states that he was on his way to Laupahoehoe to engage in work. Wednesday evening he visited the mauka camp at Pepekeo for refreshments. Here, according to his story, he was set on by Francisco Lopez and a companion. Lopez was armed with a revolver and cane knife. Hernandez' pocket was ripped open and \$10 in money taken. Lopez then slashed the victim across the right and left cheeks with the cane knife, leaving gaping wounds three inches in length. Hernandez, when he appeared at the police station yesterday afternoon, had his head swathed in a linen handkerchief.

He declares his assailant was none other than the outlaw Lopez and that he does not believe Lopez will submit to recapture without a fierce fight—Hilo Tribune.



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Robert V. Ojeda of the steamer Iwani reported to the police on Saturday evening that he had lost a gold watch and chain with fob attached. On the watch is the inscription, "Presented to A. V. Ojeda by the F. M. S. S. Co. as a mark of esteem for services rendered about January 1, 1874." The watch was formerly the property of Robert Ojeda's father.